

1 MORRISON FOERSTER
ALLYSON R. BENNETT (SBN 302090)
2 abennett@mofo.com
707 Wilshire Boulevard
3 Los Angeles, CA 90017
Telephone: 213-892-5200
4 Facsimile: 213-892-5454

5 MORRISON FOERSTER
DARALYN J. DURIE (SBN 169825)
6 ddurie@mofo.com
RAGESH K. TANGRI (SBN 159477)
7 rtangri@mofo.com
ADAM R. BRAUSA (SBN 298754)
8 abrausa@mofo.com
425 Market Street
9 San Francisco, CA 94105-2482
Telephone: 415-268-7000
10 Facsimile: 415-268-7522

11 Attorneys for Defendant
CALIFORNIA PUBLIC EMPLOYEES'
12 RETIREMENT SYSTEM

13 *(Additional counsel continued on following page)*

14
15
16
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF LOS ANGELES

19 HOLLY WEDDING, et al.,

20 Plaintiffs,

21 v.

22 CALIFORNIA PUBLIC EMPLOYEES'
23 RETIREMENT SYSTEM, et al.,

24 Defendants.

Judicial Council Coordination Proceeding No. 4936

Case No. BC517444

CLASS ACTION

Assigned for all purposes to the Honorable William
F. Highberger—Dept. SS10

[Filing Fees exempt pursuant to Gov't Code §
6103]

**SECOND CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

1 SHERNOFF BIDART ECHEVERRIA LLP

Michael J. Bidart (SBN 060582)

2 mbidart@shernoff.com

Reid Ehrlich (SBN 334012)

3 rehrlich@shernoff.com

600 South Indian Hill Boulevard

4 Claremont, California 91711

Telephone: 909-621-4935

5 Facsimile: 909-625-6915

6 BENTLEY & MORE, LLP

Gregory L. Bentley (SBN 151147)

7 gbentley@bentleymore.com

Matthew W. Clark (SBN 273950)

8 mclark@bentleymore.com

4931 Birch Street

9 Newport Beach, California 92660

Telephone: 949-254-0226

10 NELSON & FRAENKEL LLP

11 Gretchen M. Nelson (SBN 112566)

gnelson@nflawfirm.com

12 601 So. Figueroa Street, Suite 2050

Los Angeles, CA 90017

13 Telephone: 213-622-6469

Facsimile: 213-622-6019

14 KERSHAW, TALLEY & BARLOW PC

15 Stuart C. Talley (SBN 180374)

stuart@ktblegal.com

16 401 Watt Avenue

Sacramento, CA 95864

17 Telephone: 916-779-7000

Facsimile: 916-721-2501

18 *Attorneys for Plaintiffs and the Class*

19

20

21

22

23

24

25

26

27

28

1 This SECOND CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE (“Second
2 Settlement Agreement”) is entered into by and between Plaintiffs Holly Wedding, Richard M. Lodyga,
3 and Eileen Lodyga, individually and on behalf of the Settlement Class (as defined below), and Defendant
4 California Public Employees’ Retirement System (“CalPERS”). This Second Settlement Agreement
5 supersedes the Class Action Settlement Agreement and Release dated on or about July 12, 2021, which
6 agreement was terminated and is no longer valid. This Second Settlement Agreement is conditioned
7 upon and subject to approval of the Court as required by Rule 3.769 of the California Rules of Court.
8 Class Counsel (as defined below) and the Parties hereby stipulate and agree that all causes of action and
9 matters raised by Plaintiffs, individually and on behalf of the Settlement Class, and related to this lawsuit,
10 captioned *Holly Wedding, et al. v. California Public Employees’ Retirement System, an agency of the*
11 *State of California, et al.*, Case No. BC517444, in the Superior Court for the State of California for the
12 County of Los Angeles, are hereby settled and compromised on the terms and conditions set forth in this
13 Second Settlement Agreement and the releases set forth herein.

14 **1. DEFINITIONS**

15 Capitalized Terms in this Agreement are defined herein as follows:

16 **1.1** “Action” means the lawsuit, currently captioned *Holly Wedding, et al. v. California Public*
17 *Employees’ Retirement System, an agency of the State of California, et al.*, Case No.
18 BC517444, currently pending in the Superior Court for the State of California for the
19 County of Los Angeles.

20 **1.2** “Additional Premiums” means the additional premiums paid by a Settlement Class
21 Member for their CalPERS LTC Policy as a result of the Challenged Increase, i.e., the
22 difference between the premiums that a Settlement Class Member actually paid and the
23 premiums that the Settlement Class Member would have paid absent the Challenged
24 Increase and includes any additional amount paid proportionately as a result of premium
25 increases implemented after the Challenged Increase for those who paid the Challenged
26 Increase. For the avoidance of doubt, additional premiums paid as a result of a rate
27 increase other than the Challenged Increase, including but not limited to any rate increases
28 imposed after the Challenged Increase, shall not be considered “Additional Premiums” as

1 that term is used in this Agreement except as to any percentage portion of a premium
2 increase that was a result of the Challenged Increase. Notwithstanding anything in this
3 Section 1.2, in no event shall any portion of any increase that may be implemented after
4 October 31, 2024 constitute “Additional Premiums.”

5 **1.3** “CalPERS LTC Policy” or “CalPERS LTC Policies” means: CalPERS LTC1 and LTC2
6 policies held by Settlement Class Members, including policies that were terminated (i.e.,
7 through Lapse or death) after the approval of the Challenged Increase, but not including
8 policies that were converted to LTC3 policies prior to the implementation of the
9 Challenged Increase. CalPERS LTC Policies shall include all applications, schedules,
10 riders, or other forms specifically made a part of the policies at the time of their issue, plus
11 all riders and amendments issued thereafter.

12 **1.4** “Challenged Increase” means the 85% rate increase for certain LTC1 and LTC2 CalPERS
13 policyholders that was adopted by CalPERS in October 2012, announced in February
14 2013, and implemented beginning in 2015.

15 **1.5** “Claims” means all suits, claims, cross-claims, counter-claims, controversies, liabilities,
16 demands, obligations, debts, indemnities, costs, fees, expenses, losses, liens, actions, or
17 causes of action (however denominated), including Unknown Claims, of every nature,
18 character, and description, whether in law, contract, statute or in equity, direct or indirect,
19 whether known or unknown, foreseen or not foreseen, accrued or not yet accrued, or
20 present or contingent, for any injury, damage, obligation, or loss whatsoever, including
21 but not limited to compensatory damages, statutory liquidated damages, exemplary
22 damages, punitive damages, losses, costs, expenses or attorneys’ fees.

23 **1.6** “Class Counsel” means Shernoff Bidart Echeverria LLP, Kershaw, Talley & Barlow, PC,
24 Nelson & Fraenkel LLP, and Bentley & More LLP, individually and collectively, the
25 attorneys appointed by the Court to serve as Class Counsel.

26 **1.7** “Class Counsels’ Fees and Expenses” means (1) the amount of the award approved by the
27 Court to be paid to Class Counsel for attorneys’ fees and reimbursement of Class
28 Counsels’ costs and expenses, (2) any Service Awards paid to the Plaintiffs, and (3) any

1 Current Settlement Administration Expenses.

2 **1.8** “Class List” means the CalPERS LTC Policies identified by policy number.

3 **1.9** “Class Notice” means the notice of the Settlement approved by the Court to be sent by the
4 Settlement Administrator, as described in Section 5.3, to the persons on the Notice List.
5 The Parties will submit the Class Notice substantially in the form attached to this
6 Agreement as Exhibit A-1 along with a Cover Letter from Class Counsel and Plaintiffs
7 substantially in the form attached to this Agreement as Exhibit A-2, for the Court’s
8 approval.¹

9 **1.10** “Class Website” means the website set up by the Settlement Administrator containing
10 relevant information regarding the Settlement.

11 **1.11** “Court” means the Superior Court for the State of California for the County of Los
12 Angeles, Hon. William F. Highberger, or such other judge of that Court as to which the
13 Action may hereafter be assigned, which Court is presiding over the Action.

14 **1.12** “Current Policyholder” means a Settlement Class Member who has not allowed their
15 CalPERS LTC Policy to Lapse and who is not On Claim.

16 **1.13** “Current Settlement Administration Expenses” means all fees, costs, and expenses
17 incurred by the Settlement Administrator in connection with this Second Settlement
18 Agreement, including but not limited to Class Notice costs, settlement and claims
19 administration, and costs associated with the Settlement Account, including costs
20 associated with or caused by the setting up of and/or maintenance of the Settlement
21 Account, and shall include any fees, costs, and expenses incurred by the Settlement
22 Administrator with respect to the Prior Settlement except for the \$900,000 paid by
23 CalPERS for Settlement Administration Costs related to the Prior Settlement. All Current
24 Settlement Administration Expenses shall be paid from any award of Class Counsel’s
25 Fees and Expenses.

26
27 ¹ The Preliminary Approval Order is attached to this Agreement as Exhibit A. That Order further
28 attaches Exhibits 1-10, which includes various Forms, Notices, and other documents referenced herein.
References to exhibits attached to the Preliminary Approval Order are thus delineated as “A-[].”

- 1 **1.14** “Defendant” or “CalPERS” means California Public Employees’ Retirement System.
- 2 **1.15** “Election Form” means the online private and secure form that can be submitted by
3 Settlement Class Members selecting any options available under the Settlement, and, if
4 applicable, confirming and acknowledging the Surrender of the Settlement Class
5 Member’s CalPERS LTC Policy upon the Final Settlement Date and confirming and
6 acknowledging the obligation to continue to pay premiums to CalPERS until the Final
7 Settlement Date.
- 8 **1.16** “Fairness Hearing” means any hearing held by the Court on any motion(s) for final
9 approval of the Settlement Agreement for purposes of: (i) entering the Order and
10 Judgment; (ii) determining whether the Settlement Agreement should be approved as fair,
11 reasonable, adequate and in the best interests of the Settlement Class Members; (iii) ruling
12 upon an application by Class Counsel for attorneys’ fees and reimbursement of expenses
13 and Service Award payments for the Plaintiffs and Settlement Administration Expenses;
14 and (iv) ruling on any other matters raised or considered.
- 15 **1.17** “Final Approval Date” means the date on which the Court enters its Order and Judgment
16 approving the Settlement Agreement.
- 17 **1.18** “Final Settlement Award” means the payment to be provided to each Participating
18 Settlement Class Member as outlined in Sections 2.2 and 2.5 below.
- 19 **1.19** “Final Settlement Category” or “Final Settlement Categories” means the category, as of
20 the Final Settlement Date, that a Participating Settlement Class Member falls into for the
21 purposes of determining the Final Settlement Award.
- 22 **1.20** “Final Settlement Date” means the date on which the Order and Final Judgment becomes
23 final, which shall be the latest of: (i) the date of final affirmance on any appeal of the
24 Order and Judgment (including both appeals as of right and discretionary review); (ii) the
25 date of final dismissal with prejudice of the last pending appeal from the Order and
26 Judgment; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any
27 form of valid appeal from the Order and Judgment.
- 28 **1.21** “Final Settlement List” means the list provided to CalPERS and Class Counsel by the

1 Settlement Administrator that identifies all Settlement Class Members who have
2 submitted a timely Request for Exclusion.

3 **1.22** “Individual Award Letter” means the form to be sent by the Settlement Administrator with
4 the Class Notice informing Settlement Class Members about the amount of their
5 Settlement award based on their Initial Settlement Category. Included within this
6 definition are the Individual Award Letters and online Election Forms (attached hereto as
7 Exhibits A- 3 through 10). All versions of the Individual Award Letters shall be in
8 substantially the form as the Exhibits identified previously.

9 **1.23** “Initial Settlement Administration Expenses” shall mean Current Settlement
10 Administration Expenses incurred before the Final Settlement Date.

11 **1.24** “Initial Settlement Category” means the category based on policyholder status as of
12 December 31, 2022, that a Settlement Class Member would fall into for purposes of
13 determining the Final Settlement Award if that determination were being made as of
14 December 31, 2022.

15 **1.25** “Lapse” means that the coverage provided under a Settlement Class Member’s CalPERS
16 LTC Policy has terminated as a result of the Settlement Class Member’s failure to pay
17 premiums pursuant to the terms of their CalPERS LTC Policy or as a result of the
18 Settlement Class Member’s affirmative action to cancel their CalPERS LTC Policy.

19 **1.26** “Lapse Claim Form(s)” means the form(s) which Participating Settlement Class Members
20 must submit online to the Settlement Administrator to confirm that they allowed their
21 CalPERS LTC Policy to Lapse as a result of the Challenged Increase. “Lapse Claim
22 Form(s)” shall also include any Lapse Claim Form submitted by a Settlement Class
23 member under the Prior Settlement Agreement.

24 **1.27** “Late Election Form” means the form for Participating Settlement Members who go On
25 Claim between the Preliminary Approval Date and the Final Settlement Date, that the
26 Participating Settlement Member fills out to identify whether the Participating Settlement
27 Class Member elects to retain their CalPERS LTC Policy or to select a different option
28 based on the Participating Settlement Class Member’s Initial Settlement Category. The

1 Late Election Form shall be in substantially the form as Exhibit A-10 hereto.

2 **1.28** “Notice Date” means the date on which the Settlement Administrator initially mails the
3 Class Notice, or, if the Settlement Administrator initially mails the Class Notice on a
4 rolling basis, the date on which the Settlement Administrator mails the Class Notice that is
5 latest in time.

6 **1.29** “Notice List” means those individuals, along with their addresses, that are reflected in
7 Defendant’s records as the last known policy owners of the CalPERS LTC Policies on the
8 Class List. The Notice List shall identify the name of each Settlement Class Member, all
9 contact information that the CalPERS LTC program has for each Settlement Class
10 Member, the policy number for the Settlement Class Member, the date that Settlement
11 Class Member began paying premiums for their CalPERS LTC Policy, the Initial
12 Settlement Category into which each Settlement Class Member falls, and the Final
13 Settlement Award each Settlement Class Member would receive from the Settlement if
14 the Settlement were final on the date the Notice List is created. If the Settlement
15 Administrator is unable to contact any Settlement Class Member, CalPERS shall add to
16 the Notice List, upon request by the Settlement Administrator, the social security number
17 for Settlement Class Members who the Settlement Administrator is not able to contact.

18 **1.30** “On Claim” means the individual (a) has submitted an application for benefits under their
19 policy which application is subsequently granted, or (b) is receiving benefits under their
20 policy.

21 **1.31** “Order and Final Judgment” means the (i) Court’s Order Granting Final Approval to Class
22 Action Settlement, and (ii) Final Judgment on Class Action Settlement Between Plaintiffs
23 and California Public Employees’ Retirement System. The Final Judgment on Class
24 Action Settlement Between Plaintiffs and California Public Employees’ Retirement
25 System shall incorporate the terms of the Settlement in accordance with California Rules
26 of Court 3.769 and 3.771. Pursuant to California Rule of Court 3.769(h), after granting
27 final approval of the Settlement, the Court shall retain jurisdiction over the Parties to
28 enforce the terms of the Order and Final Judgment. The Parties will submit proposed

1 forms of the Order Granting Final Approval to Class Action Settlement and the Final
2 Judgment on Class Action Settlement Between Plaintiffs and California Public
3 Employees' Retirement System substantially in the forms attached to this Agreement as
4 Exhibit B (the Final Approval Order) and Exhibit C (the Final Judgment) for the Court's
5 approval.

6 **1.32** "Participating Settlement Class Member" means any Settlement Class Member who does
7 not opt out of the Settlement by submitting a timely Request for Exclusion pursuant to
8 Section 6.1.

9 **1.33** "Parties" means, collectively, Plaintiffs and Defendant.

10 **1.34** "Plaintiff" or "Plaintiffs" means Holly Wedding, Richard M. Lodyga, and Eileen Lodyga,
11 individually and collectively, and as representatives of the Settlement Class, and their
12 assigns, successors-in-interest, representatives, employees, managers and members.

13 **1.35** "Plaintiffs' Service Award(s)" means the amount of any award approved by the Court to
14 be paid to Plaintiffs from the Settlement Fund, not including any settlement relief the
15 Plaintiffs may be eligible to receive, as compensation for efforts undertaken by them on
16 behalf of the Settlement Class.

17 **1.36** "Preliminary Approval Date" means the date on which the Court enters the Preliminary
18 Approval Order.

19 **1.37** "Preliminary Approval Order" means the [Proposed] Order Granting Preliminary
20 Approval of Class Action Settlement substantially in the form attached to this Settlement
21 Agreement as Exhibit A and as approved by the Court.

22 **1.38** "Prior Settlement Agreement" shall mean the Settlement Agreement previously agreed to
23 by the Parties on July 12, 2021, that became null and void on April 20, 2022.

24 **1.39** "Released Claims" means any and all Claims that (a) were asserted in the Action, (b)
25 could have been asserted in the Action, (c) hereafter may be asserted, and (d) arise out of
26 or relate to the facts, transactions, events, occurrences, acts, disclosures, statements,
27 omissions, or failures to act concerning the Challenged Increase. Except as to the benefits
28 provided under the terms of this Settlement, "Released Claims" include the denial of

1 benefits to any Settlement Class Member while On Claim if benefits are denied solely
2 because the Settlement Class Member has exhausted their benefits as a result of choosing
3 to reduce their benefits in response to the Challenged Increase. “Released Claims”
4 specifically do not include any claims arising from the denial of benefits to any Settlement
5 Class Member while On Claim for any other reason.

6 **1.40** “Released Parties” means, individually and collectively, the State of California,
7 Defendant, and Defendant’s current and former agents, representatives, principals,
8 employees, independent contractors, attorneys, directors, board members, officers,
9 parents, fiduciaries, administrators, partners, creditors, insurance providers, subsidiaries,
10 divisions, affiliates, related entities, predecessors, successors and assignees.

11 **1.41** “Releasing Parties” means each Plaintiff and Participating Settlement Class Member on
12 behalf of themselves and their respective agents, heirs, relatives, representatives,
13 attorneys, successors, trustees, subrogees, executors, assignees, and all other persons or
14 entities acting by, through, under, or in concert with any of them purporting to claim on
15 their behalf. Releasing Parties does not include any Settlement Class Member who timely
16 and validly requests exclusion from the Settlement Class.

17 **1.42** “Request for Exclusion” means a request for exclusion from the Settlement by a
18 Settlement Class Member that is to be sent by the Settlement Class Member to the
19 Settlement Administrator by or before the Response Deadline, pursuant to Section 6.1 of
20 this Agreement. Settlement Class Members may submit a Request for Exclusion in a form
21 sufficient to provide the information necessary to inform the Settlement Administrator of
22 the Settlement Class Member’s decision to request exclusion which shall include the name
23 and address of the Settlement Class Member along with an express statement by the
24 Settlement Class Member that he/she wishes to be excluded from the Settlement and must
25 be signed by the Settlement Class Member.

26 **1.43** “Response Deadline” means the date no later than sixty (60) calendar days from the
27 Notice Date.

28 **1.44** “Settlement” means all terms of the settlement set forth in this Second Settlement

1 Agreement.

2 **1.45** “Settlement Account” means the bank account established by the Settlement
3 Administrator pursuant to the terms of this Second Settlement Agreement from which
4 monies payable under the terms of the Settlement shall be paid, as set forth herein. The
5 Settlement Account is intended to be a “qualified settlement fund” (“Qualified Settlement
6 Fund” or “QSF”) within the meaning of Treasury Regulation § 1.468B-1. The Settlement
7 Administrator, within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be
8 responsible for filing tax returns for the Settlement Fund and paying from the Qualified
9 Settlement Fund any taxes owed with respect to the Settlement Account. The Parties
10 hereto agree that the Settlement Account shall be treated as a “qualified settlement fund”
11 from the earliest date possible, and agree to any relation-back election required to treat the
12 Settlement Account as a “qualified settlement fund” from the earliest date possible.
13 Defense Counsel agree to provide promptly to the Settlement Administrator the statement
14 described in Treasury Regulation § 1.468B-3(e), if necessary. All taxes on any interest
15 earned by money in the Settlement Account shall be paid out of the Settlement Account,
16 out of the interest earned on the Settlement Account, shall be considered to be a cost of
17 administration of the Settlement, shall be timely paid by the Settlement Administrator
18 without prior order of the Court, and under no circumstance shall Defendants have any tax
19 liability related to the Settlement or the Settlement Account. All funds held in the
20 Settlement Account and all earnings thereon shall be deemed to be *in custodia legis* of the
21 Court and shall remain subject to the jurisdiction of the Court until such time as the funds
22 shall have been disbursed pursuant to the terms of the Second Settlement Agreement or
23 further order of the Court. The Settlement Account shall be established under terms
24 acceptable to Plaintiffs and Defendant at a financial institution with more than \$20 billion
25 in an account or accounts insured by an agency or agencies of the United States
26 government, with insurance that exceeds any amounts deposited therein, for use in the
27 Settlement to facilitate the effectuation and payment of consideration paid to Participating
28 Settlement Class Members, Current Settlement Administration Expenses, Plaintiffs’

1 Service Awards, and Class Counsels' Fees and Expenses. The Settlement Administrator
2 may only use the funds paid by the Defendant into the Settlement Account as specified in
3 and consistent with the terms of the Second Settlement Agreement and pursuant to an
4 Order of the Court. Further, for the avoidance of doubt, any expenses or fees associated
5 with or caused by the setting up of and/or maintenance of the Settlement Account shall be
6 paid as Current Settlement Administration Expenses.

7 **1.46** "Settlement Administrator" means the entity appointed by the Court to send notice to the
8 Settlement Class and administer the Settlement as referenced herein.

9 **1.47** "Second Settlement Agreement" means this Second Class Action Settlement Agreement
10 and Release.

11 **1.48** "Settlement Class" means: any individual who was a California citizen in February 2013,
12 and who purchased LTC1 and LTC2 policies that included the automatic inflation
13 protection benefit and were subjected to the Challenged Increase. Policyholders who
14 converted their policies to LTC3 policies prior to the implementation of the Challenged
15 Increase are not included in the Settlement Class, even if the conversion occurred after the
16 Challenged Increase was approved in October 2012. The Settlement Class does not
17 include those individuals who opted out of the Class certified by the Court on January 28,
18 2016, and who are identified on Exhibit D hereto.

19 **1.49** "Settlement Class Member(s)" means all persons who are in the Settlement Class.

20 **1.50** "Settlement Fund" means the (i) Total Settlement Amount, (ii) Class Counsels' Fees and
21 Expenses; (iii) Plaintiffs' Service Awards; and (iv) Current Settlement Administration
22 Expenses. Defendant shall have no financial obligations under this Second Settlement
23 Agreement or the Settlement other than payment of the Settlement Fund. The Settlement
24 Fund shall be deposited by Defendant into the Settlement Account in accordance with
25 Section 2.1.

26 **1.51** "Surrender" means that the Participating Settlement Class Member is giving up any and
27 all contractual and other rights arising under or relating to, in whole or in part, their
28 CalPERS LTC Policy in exchange for the receipt of benefits as provided under the

1 Settlement. For the sake of clarity, Participating Settlement Class Members who elect to
2 Surrender their CalPERS LTC Policies shall no longer have an LTC Policy with
3 CalPERS, and CalPERS shall have no further obligations under the policy issued by
4 CalPERS to that Participating Settlement Class Member or liability based on it.

5 **1.52** “Total Settlement Amount” means the amount to be calculated pursuant to the terms of
6 Sections 2.1, 2.2, 2.3 and 2.4 below to be the total consideration paid by Defendant out of
7 its Long Term Care Fund for the benefit of the Participating Settlement Class Members.

8 **1.53** “Unknown Claims” means any claims asserted, that might have been asserted, or that
9 hereafter may be asserted arising out of the facts, transactions, events, occurrences, acts,
10 disclosures, statements, omissions, or failures to act that were alleged in the Action with
11 respect to the Released Claims that Plaintiffs or any Participating Settlement Class
12 Member does not know or suspect to exist in their favor at the time of the entry of the
13 Order and Judgment, and which if known by them might have affected their decision to
14 opt out of or object to the Settlement.

15 **1.54** The terms “they” or “their” shall also mean “he or she” and “his or her” or “it” or “its,”
16 where applicable. “Person” includes individuals and entities. Defined terms expressed in
17 the singular also include the plural form of such term, and vice versa, where applicable.

18 **1.55** All references herein to Sections refer to the Sections and paragraphs of this Second
19 Settlement Agreement, unless otherwise expressly stated in the reference.

20 **2. SETTLEMENT RELIEF**

21 **2.1** CalPERS agrees that, in exchange for: (i) entry of the Order and Final Judgment; (ii) the
22 release of claims provided pursuant to Section 8; and (iii) the conditions set forth in
23 Section 2.2, it will, within seventy-five (75) days of the Final Settlement Date, pay the
24 Settlement Fund into the Settlement Account, less (i) any amount previously deposited
25 into the Settlement Account and (ii) any payments owed to Class Members in Category I
26 or Participating Class Members eligible to reverse their election pursuant to Section 5.7.
27 It will pay any remaining portion of the Settlement Fund owed to Class Members in
28 Category I or Participating Class Members eligible to reverse their election pursuant to

Section 5.7 by no later than thirty (30) days after the Settlement Administrator informs CalPERS of all elections made by policyholders in Category I or by policyholders who validly reversed their elections pursuant to Section 5.7.

2.2 The payments to Participating Settlement Class Members included in the Total Settlement Amount shall be based on the settlement structure outlined below and shall be calculated as follows:

FINAL SETTLEMENT CATEGORY	PAYMENTS TO PARTICIPATING SETTLEMENT CLASS MEMBERS
<p>CATEGORY A. Participating Settlement Class Members who are Current Policyholders and who are not On Claim on the Final Settlement Date.</p>	<p>Participating Settlement Class Members who, on the Final Settlement Date, are Current Policyholders and who are not On Claim shall have the following options:</p> <p style="padding-left: 40px;">Option 1: Receive a refund equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a \$1,000 cash payment and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Member who does not submit an Election Form shall be deemed to have selected Option 2.</p>
<p>CATEGORY B. Participating Settlement Class Members who are On Claim both on the Notice Date and the Final Settlement Date, and who paid the Challenged Increase.</p>	<p>Participating Settlement Class Members who paid any part of the Challenged Increase and are On Claim both on the Notice Date and on the Final Settlement Date, shall have the following options:</p> <p>Option 1: Receive a refund equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a \$1,000 cash payment and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Member who does not submit an Election Form shall be deemed to have selected Option 2.</p>
<p>CATEGORY C. Participating Settlement Class Members who are On Claim both on the Notice Date and the Final Settlement Date, and who reduced benefits as a result of the Challenged Increase.</p>	<p>Participating Settlement Class Members who are On Claim on both the Notice Date and the Final Settlement Date, but reduced their benefits as a result of the Challenged Increase before going On Claim, shall receive have the following options:</p> <p>Option 1: Receive a refund equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a \$1,000 cash payment and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Member who does not submit an Election Form shall be deemed to have selected Option 2.</p>
<p>CATEGORY D. Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between February 1, 2013, and December 31, 2014.</p>	<p>Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between February 1, 2013, and December 31, 2014, and who submit a Lapse Claim Form stating under penalty of perjury that</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>they let their policy lapse as a result of the Challenged Increase, shall receive a refund equivalent to 40% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of their CalPERS LTC Policy through the date their CalPERS LTC Policy Lapsed, less any amounts paid in benefits under their CalPERS LTC Policy.</p>
<p>CATEGORY E. Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between January 1, 2015, and the Final Settlement Date.</p>	<p>Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between January 1, 2015, and the Final Settlement Date, and who submit a Lapse Claim Form stating under penalty of perjury that they let their CalPERS LTC Policy lapse as a result of the Challenged Increase, will receive 80% of all Additional Premiums paid, or \$2,000, whichever is greater.</p>
<p>CATEGORY F. Participating Settlement Class Members who passed away after February 1, 2013, and before the Final Settlement Date, and who reduced benefits as a result of the Challenged Increase.</p>	<p>The estates of Participating Settlement Class Members who (1) died after February 1, 2013, and before the Final Settlement Date, (2) were Current Policyholders or were On Claim at the time of their death, and (3) reduced their benefits as a result of the Challenged Increase, shall receive 80% of all</p>

	Additional Premiums paid or, \$2,000, whichever is greater.
<p>CATEGORY G. Participating Settlement Class Members who passed away after February 1, 2013, and before the Final Settlement Date, who paid the Challenged Increase, and who never reduced benefits as a result of the Challenge Increase.</p>	<p>The estates of Participating Settlement Class Members who (1) died after February 1, 2013, and before the Final Settlement Date, (2) were Current Policyholders or were On Claim at the time of their death, (3) paid the Challenged Increase, and (4) never reduced their benefits as a result of the Challenged Increase, shall receive 80% of all Additional Premiums paid.</p>
<p>CATEGORY H. Participating Settlement Class Members who paid the Challenged Increase, went On Claim, and exhausted their benefits before the Final Settlement Date.</p>	<p>Participating Settlement Class Members who paid the Challenged Increase, who went On Claim at any time before the Final Settlement Date, and exhausted their benefits before the Final Settlement Date, shall receive a refund of 80% of all Additional Premiums paid.</p>
<p>CATEGORY I. Participating Settlement Class Members who are Current Policyholders, who were not On Claim as of the Notice Date, but are On Claim as of the Final Settlement Date.</p>	<p>Participating Settlement Class Members who are Current Policyholders, who were not On Claim as of the Notice Date, but are On Claim as of the Final Settlement Date, shall receive a Late Election Form giving them the following options:</p> <p style="text-align: center;">Option 1: Receive a refund</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a cash payment of \$1,000 and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Members who does not return an Late Election Form shall be deemed to have selected Option 2.</p>
--	---

2.3 The Final Settlement Categories above shall be determined as follows: Within forty-five

1 (45) days of the Final Settlement Date, CalPERS shall submit to the Settlement
2 Administrator an updated list of all Participating Settlement Class Members, the Final
3 Settlement Category they fall into, and a calculation of their Final Settlement Awards.
4 The list shall be current as of the Final Settlement Date and include all premiums paid by
5 the Participating Settlement Class Members up through that date.

6 **2.4** To the extent any Participating Settlement Class Member disputes their Final Settlement
7 Category or Final Settlement Award, they may submit their dispute to the Settlement
8 Administrator within thirty (30) days of the mailing of their settlement check. The
9 Settlement Administrator will have the sole authority to resolve any disputes regarding the
10 Final Settlement Category or Final Settlement Award of the Participating Settlement Class
11 Member. However, the Settlement Administrator shall provide copies of all disputes to
12 counsel for CalPERS and Class Counsel for review and response. The Settlement
13 Administrator shall resolve any disputes within thirty (30) days. If a Participating
14 Settlement Class Member's dispute is upheld, then within fourteen (14) days of the
15 Settlement Administrator issuing a decision, CalPERS shall deposit into the Settlement
16 Account any additional funds required to be paid as a result of the resolution of the
17 dispute. The Settlement Administrator shall issue payment to the Participating Settlement
18 Class Members within 15 days of receipt of any additional funds required to be paid as a
19 result of the resolution of the dispute.

20 **2.5** Within thirty (30) days after receiving the Total Settlement Amount, the Settlement
21 Administrator shall deliver to each Participating Settlement Class Member (except for
22 Settlement Class Members who are in Category I above or who validly reverse their
23 election pursuant to Section 5.7) by U.S. mail, first-class postage prepaid, a settlement
24 check in the amount of the Final Settlement Award to which they are entitled, if any.
25 Settlement checks will be automatically mailed without any further action on the part of
26 the Participating Settlement Class Members, except that settlement checks will be mailed
27 to Participating Settlement Class Members in Categories D and E above only if they have
28 submitted a Lapse Claim Form, as described in Section 5.5 below. Settlement checks will

1 be mailed to Participating Settlement Class Members who are in Category I above or who
2 validly reverse their election pursuant to Section 5.7, within sixty (60) days of receipt by
3 CalPERS of the list of elections made by policyholders on the Late Election List and
4 policyholders eligible to reverse their elections pursuant to Section 5.7.

5 **2.6** In order to remain in Category A, Participating Settlement Class Members must continue
6 paying the premiums established by CalPERS up to the Final Settlement Date, no matter
7 the amount of the premium. Within five (5) days of the Final Settlement Date, the
8 Settlement Administrator shall send a letter to all Participating Settlement Class Members
9 in Category A who selected Option 1 informing them of the Final Settlement Date and
10 advising the Participating Settlement Class Members that they should no longer make any
11 premium payments to CalPERS.

12 **2.7** In addition to the settlement benefits set forth in this Second Settlement Agreement,
13 Defendant agrees that for a period of time commencing from the execution of this Second
14 Settlement Agreement until October 31, 2024, it will not implement any new premium
15 rate increase as to Participating Settlement Class Members.

16 **2.8** No later than three-hundred sixty-five (365) days after the conclusion of the distribution of
17 the Total Settlement Amount, the Settlement Administrator shall submit to the Court a
18 report identifying all cash payments made to the Participating Settlement Class Members
19 and all checks issued to Participating Settlement Class Member that remain uncashed.
20 Thereafter, subject to Court approval, within thirty (30) days after the report is filed with
21 the Court, a hearing shall be scheduled before the Court to confirm that the distribution of
22 all funds associated with any uncashed checks issued to Participating Settlement Class
23 Members shall be made to the California State Controller's Unclaimed Money Fund. No
24 later than thirty (30) days after the Court issues its Order directing the distribution of all
25 funds associated with any uncashed checks to the California State Controller's Unclaimed
26 Money Fund, the Settlement Administrator shall transfer all such funds with such
27 information as required by the State Controller to identify the beneficiary of the funds.
28 Any remaining funds in excess of funds associated with uncashed checks shall be

1 distributed to an appropriate cy pres recipient subject to Court approval.

2 **2.9** To the extent the Court finds that the Settlement does not meet the standard for
3 preliminary or final approval, the Parties will negotiate in good faith to modify the
4 Settlement directly or with the assistance of the Hon. Layn Phillips (Ret.) and endeavor to
5 resolve the issue(s) to the satisfaction of the Court.

6 **3. PRELIMINARY AND FINAL APPROVAL**

7 **3.1** The Parties agree that Plaintiffs shall move for an order seeking preliminary approval of
8 the Settlement no later than March 10, 2023. Plaintiffs shall also move for an order: (i)
9 certifying the Settlement Class; and (ii) approving the Class Notice plan. Plaintiffs will
10 share with CalPERS' counsel drafts of the motions seeking preliminary and final approval
11 of the Settlement, and all other settlement-related filings (excluding Class Counsels'
12 motion for Plaintiffs' Service Award(s) and Class Counsels' Fees and Expenses), no less
13 than five (5) days before they are filed.

14 **3.2** Subject to approval by the Court, Defendant conditionally consents to certification of the
15 Settlement Class for settlement purposes only. Defendant agrees to class action treatment
16 of the claims alleged or potentially asserted solely for the purpose of effecting the
17 compromise and settlement of those claims on a class basis as set forth in the Second
18 Settlement Agreement. If the Second Settlement Agreement is terminated pursuant to the
19 provisions set forth in Section 18 or the Final Settlement Date does not occur for any
20 reason, the Parties will not offer this Second Settlement Agreement, any agreement
21 negotiated between the Parties in connection with or regarding the Settlement or the
22 Second Settlement Agreement, or any motion seeking approval of the Settlement or
23 Second Settlement Agreement in connection with any motion to decertify the class
24 certified by the Court in its Order dated January 28, 2016, or in any other proceeding in
25 this Action or any other case or legal proceeding.

26 **3.3** Class Counsel agrees to file a motion for final approval of the Settlement and an
27 Application for Plaintiffs' Service Award and Class Counsels' Fees and Expenses no later
28 than sixteen (16) court days, before the Fairness Hearing at which the Application will be

1 heard.

2 **4. SETTLEMENT ADMINISTRATOR**

3 **4.1** The Parties shall request contemporaneously with seeking preliminary approval that the
4 Court appoint the Settlement Administrator.

5 **4.2** The Settlement Administrator shall establish the Settlement Account, and shall be
6 responsible for effectuating Class Notice and administering the Settlement Account and the
7 Second Settlement consistent with the terms of the Second Settlement Agreement and the
8 Court's Orders.

9 **5. NOTICE**

10 **5.1** By no later than March 8, 2023, CalPERS shall submit to Class Counsel the Notice List.
11 The Notice List shall be designated Confidential Information pursuant to the Protective
12 Order entered in the Action. Class Counsel shall submit the Notice List to the Settlement
13 Administrator only after the Settlement Administrator agrees to be bound by the Protective
14 Order. The Parties agree and understand that if more time is needed to prepare the Notice
15 List, they will agree on another date for delivering the Notice List to Class Counsel, unless
16 otherwise ordered by the Court.

17 **5.2** Subject to the requirements of any orders entered by the Court, no later than fourteen (14)
18 days after the signing of this Second Settlement Agreement by all Parties, or three (3)
19 business days after the Preliminary Approval Date, whichever is later, CalPERS shall
20 deposit the sum of \$900,000 with the Settlement Administrator to cover Initial Settlement
21 Administration Expenses. Should the Final Settlement Date occur, the \$900,000 deposited
22 by CalPERS for the Second Settlement shall be credited towards any amounts due for Class
23 Counsel's Fees and Expenses. If the Final Settlement Date never occurs, CalPERS and
24 Class Counsel shall each be responsible for ½ of all Administration Expenses associated
25 with this settlement over and above \$900,000. However, in no event shall CalPERS pay
26 more than \$1,000,000 of the total Current Settlement Administration Expenses, and Class
27 Counsel shall be responsible for all remaining Current Settlement Administration Expenses
28 over and above the \$1,000,000 paid by CalPERS.

1 **5.3** No later than thirty (30) days after receipt of the Notice List, the Settlement Administrator
2 shall disseminate the Class Notice to all Settlement Class Members by regular mail (and
3 also by email to all Settlement Class Members whose email addresses are known). The
4 Class Notice shall contain the content and be substantially in the form as attached hereto as
5 Exhibit A-1, shall be approved by the Court, and shall advise Settlement Class Members of
6 (i) their rights to object to the Settlement under the procedures and in accordance with the
7 deadlines set by the Court, (ii) their rights to request exclusion from the Settlement under
8 the procedures and in accordance with the deadlines set by the Court (“opt out”), and (iii)
9 the specific release language that will be included in the Order and Judgment that will be
10 binding on them if the Settlement is approved. The Class Notice shall include an Individual
11 Settlement Award Form. Based on their Initial Settlement Category as determined from
12 CalPERS’ records, the Individual Settlement Award Form shall provide each Settlement
13 Class Member with the following information: (1) the amount they will receive if they elect
14 a premium refund under the Settlement, they use no additional benefits under their
15 CalPERS LTC Policy, and their Initial Settlement Category does not change prior to the
16 Final Settlement Date; (2) the Settlement Class Member’s current address and point of
17 contact; (3) a statement to Settlement Class Members who are Current Policyholders who
18 are not On Claim that they must continue to pay premiums established by CalPERS for
19 their CalPERS LTC policy until the Final Settlement Date in order to remain in Category A.

20 **5.4** For Settlement Class Members in Categories A, B, and C as defined in Section 2.2 above,
21 the Class Notice will also include information as to how Class Members can access an
22 online portal to complete an Election Form to elect whether they are selecting Option 1 or
23 Option 2 under the Second Settlement. The Election Form shall be completed online no
24 later than sixty (60) days after the Notice Date. The Settlement Administrator shall develop
25 processes for Settlement Class Members to return Election Forms by regular mail in the
26 event that the Settlement Class Member cannot access the online portal. Failure to return
27 the Election Form does not prevent a Current Policyholder from becoming a Participating
28 Settlement Class Member. Any Class Member in Categories A, B, and C who does not

1 complete an Election Form within sixty (60) days will be deemed to have elected Option 2,
2 whereby the Participating Settlement Class Member receives a \$1,000 cash payment and
3 retains all benefits under their CalPERS LTC Policy.

4 **5.5** For Participating Settlement Class Members who let their CalPERS LTC Policies Lapse as
5 a result of the Challenged Increase (Categories D and E as defined in Section 2.2 above),
6 those Participating Settlement Class Members shall be required to complete and submit a
7 Lapse Claim Form online by no later than sixty (60) days after the Notice Date stating
8 under penalty of perjury that they let their CalPERS LTC Policy lapse as a result of the
9 Challenged Increase. Any prior Lapse Claim Form submitted under the Prior Settlement
10 shall be deemed applicable to this Second Settlement Agreement and shall satisfy the Lapse
11 Notice requirement.

12 **5.6** For Settlement Class Members who are Current Policyholders who were not On Claim as of
13 the Notice Date but are On Claim as of the Final Settlement Date (Category I as defined in
14 Section 2.2 above), CalPERS shall submit a list of such policyholders (“Late Election List”)
15 to the Settlement Administrator by no later than fifteen (15) days after the Final Settlement
16 Date. No later than fifteen (15) days after receiving the Late Election List, the Settlement
17 Administrator shall disseminate to Participating Settlement Class Members on the Late
18 Election List via regular mail a Late Election Form that informs the Participating
19 Settlement Class Member of their right to choose, within thirty (30) days of the date that the
20 Settlement Administrator mails the letters, whether to keep their CalPERS LTC Policy in
21 place and receive a \$1,000 cash payment or to Surrender their CalPERS LTC Policy in
22 exchange for a payment of 80% of premiums paid less benefits received. The Settlement
23 Administrator shall develop methods for Participating Settlement Class Members on the
24 Late Election List to submit their election choice by mail or through a secure online portal.
25 Participating Settlement Class Members who do not complete their Election Form within
26 thirty (30) days of the date that the Settlement Administrator mails the Late Election Letter
27 shall be deemed to have elected to keep their CalPERS LTC Policy in place and receive the
28 payment pursuant to Option 2. The Settlement Administrator shall provide a list identifying

1 all election choices of those Participating Settlement Class Members on the Late Election
2 List to CalPERS no later than fifteen (15) days after the expiration of the deadline for
3 Participating Settlement Class Members to complete their Late Election Forms.

4 **5.7** Any Settlement Class Member in Category A who selected Option 1 and contacts CalPERS
5 or the Administrator in writing within forty-five (45) days after the Final Settlement Date
6 seeking to reverse their election, shall be entitled to do so if they can establish that 1) on the
7 Final Settlement Date they were in need of and receiving the type of care that would qualify
8 for benefits under their CalPERS LTC Policy (but for any elimination period) and 2) within
9 thirty (30) days following the Final Settlement Date they submitted an application for
10 benefits which is subsequently granted by CalPERS.

11 **5.8** To the extent a Settlement Class Member's address, phone number, or email address is
12 deemed inoperable or outdated, the Settlement Administrator shall make good faith efforts
13 to identify alternative addresses, phone numbers, or email addresses. Also, for Settlement
14 Class Members who cannot be contacted, the Settlement Administrator shall make good
15 faith efforts to locate and contact relatives or other authorized individuals to advise them of
16 the Settlement and the right to seek exclusion or to participate in the benefits of the
17 Settlement.

18 **5.9** For Settlement Class Members who are deceased, the Settlement Administrator shall make
19 good faith efforts to identify and contact the Settlement Class Members' heirs and to
20 provide them with the Class Notice.

21 **5.10** To answer questions concerning the Second Settlement and Settlement Class Members'
22 options, the Settlement Administrator shall establish a toll free phone number and/or email
23 address to provide information regarding the Second Settlement and to respond to inquiries
24 from Settlement Class Members. The Settlement Administrator shall also develop and
25 publish a dedicated website at www.calpersltcclassaction.com to ensure that Settlement
26 Class Members' questions about the Settlement are answered in an adequate and timely
27 manner.

28 **5.11** The erroneous mailing of a Class Notice to a person who is not in the Settlement Class shall

1 not render such person a member of the Settlement Class or otherwise entitle such person to
2 participate in the Settlement.

3 **5.12** Fourteen (14) days after the Response Deadline, the Settlement Administrator shall provide
4 Class Counsel and CalPERS with the Final Settlement List. And, nineteen (19) days after
5 the Response Deadline, the Settlement Administrator shall file a report with the Court
6 identifying all of its actions taken with respect to Class Notice and identifying all
7 Settlement Class Members who have timely filed a Request for Exclusion.

8 **6. RESPONSES TO CLASS NOTICE**

9 **6.1** The Class Notice shall direct that each Settlement Class Member wishing to opt-out of the
10 Settlement must submit a written and signed Request for Exclusion from the Settlement to
11 the Settlement Administrator by mail. The Request for Exclusion must be signed and
12 postmarked by the Response Deadline. For Settlement Class Members who submit their
13 Request for Exclusion by mail, the date of the postmark on the return mailing envelope
14 shall be the exclusive means to determine whether a Request for Exclusion has been timely
15 submitted. The Class Notice shall provide instructions to Settlement Class Members on
16 how to submit a Request for Exclusion.

17 **6.2** Class Counsel shall be entitled to communicate with any Settlement Class Member who
18 submits a timely Request for Exclusion or any Settlement Class Member to determine
19 whether the request was knowingly made and to seek to have the Settlement Class Member
20 retract the Request for Exclusion.

21 **6.3** Every Settlement Class Member who does not file a timely written Request for Exclusion in
22 accordance with Section 6.1 above shall be bound by all subsequent proceedings, orders,
23 and judgments in this Action.

24 **6.4** The Class Notice shall state that Settlement Class Members, except those who have
25 submitted a Request for Exclusion, shall have the right to submit written objections to the
26 Settlement and/or to appear at the Final Approval Hearing (the then-current date of which
27 shall be included in the Class Notice) and that if no objection is submitted then it is waived
28 and the Settlement Class Member is deemed to agree with the proposed Second Settlement.

1 Written objections, if any, must be served on the Settlement Administrator no later than the
2 Response Deadline. Settlement Class Members' written comments must include: (1) their
3 full name and current address and, if the Settlement Class Member is separately represented
4 by an attorney, the name of their attorney and attorney's address; (2) reference to the matter
5 of *Wedding v. CalPERS*, Case No. BC517444; (3) if the Settlement Class Member objects
6 to the Second Settlement, the factual and legal reasons for the objection (including all
7 relevant documents that pertain to their objection); (4) a statement that the Settlement Class
8 Member has reviewed the Settlement Class definition and understands that they are a
9 Settlement Class Member, and has not opted out of the Settlement Class; (5) a Notice of
10 Intention to Appear at the Final Approval Hearing if the Settlement Class Member intends
11 to appear in person at the hearing; and (6) the Settlement Class Member's signature.

12 Settlement Class Members who have not filed a timely Request for Exclusion may also
13 appear at the Final Approval Hearing and voice their objection even if they have not
14 submitted a written objection in accordance with the procedures outlined in this paragraph.

15 **6.5** The Parties may file responses to written objections any time prior to the Fairness Hearing
16 at which the written objections will be heard, or as otherwise directed by the Court.

17 **7. CLASS COUNSELS' FEES AND EXPENSES**

18 **7.1** In addition to the Total Settlement Amount, Defendant agrees to pay out of its Long Term
19 Care Fund, pursuant to Court approval, an award of reasonable attorneys' fees and
20 reimbursement for reasonable costs to Class Counsel. The total amount of Class Counsel
21 Fees and Expenses (including, without limitation, amounts deposited with the Settlement
22 Administrator pursuant to Section 5.2, Plaintiffs' Service Award(s) pursuant to Section 7.2,
23 and Current Settlement Administration Expenses) shall not exceed \$80 million.

24 **7.2** Class Counsel may move the Court, and Defendant agrees not to oppose the motion, for a
25 service award payment to each Plaintiff in a total amount for all Plaintiffs not to exceed
26 \$85,000 to compensate Plaintiffs for efforts undertaken by them on behalf of the Settlement
27 Class. The payment of this service award shall be made to each Plaintiff in addition to, and
28

1 shall not diminish or prejudice in any way, any settlement relief they may be eligible to
2 receive.

3 **7.3** Defendant and Plaintiffs shall not be liable or obligated to pay any fees, expenses, costs, or
4 disbursements to any person, either directly or indirectly, in connection with the claims
5 brought by the Releasing Parties in this Action, this Second Settlement Agreement, or the
6 Second Settlement, other than those expressly provided in this Second Settlement
7 Agreement. This Section shall have no effect on claims brought in the Action by parties
8 other than the Releasing Parties that are unrelated to this Second Settlement Agreement or
9 the Second Settlement.

10 **7.4** The Parties agree that the Second Settlement is not conditioned on the Court's approval of
11 Plaintiffs' Service Award or Class Counsels' Fees and Expenses.

12 **7.5** Defendant CalPERS shall not have any responsibility for, or interest in, or liability
13 whatsoever with respect to the allocation among Class Counsel, and/or any other person
14 who may assert some claim thereto, of any fee or expense award that the Court may make
15 in the Action.

16 **8. RELEASES AND WAIVERS OF RIGHTS**

17 **8.1** Upon the issuance of funds and benefits to Participating Class Members pursuant to Section
18 2.5 of the Second Settlement, the Releasing Parties shall be deemed to have, and by
19 operation of the Order and Judgment shall have, fully, finally, and forever released,
20 relinquished and discharged the Released Parties of and from all Released Claims.

21 **8.2** With respect to any and all Claims released under this Agreement, the Parties stipulate and
22 agree that, upon issuance of funds or benefits to Participating Settlement Class Members of
23 the Final Settlement Award pursuant to Section 2.5 of the Second Settlement, Plaintiffs
24 shall be deemed to have, and by operation of the Order and Judgment shall have, expressly
25 waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and
26 benefits of Section 1542 of the California Civil Code, which provides:

27 **A general release does not extend to claims that the creditor or**
28 **releasing party does not know or suspect to exist in his or her favor at**

1 **the time of executing the release and that, if known by him or her,**
2 **would have materially affected his or her settlement with the debtor or**
3 **released party.**

4 Plaintiffs shall, upon the issuance of funds or benefits to Participating Settlement
5 Class Members pursuant to Section 2.5 of the Second Settlement, be deemed to have, and
6 by operation of the Order and Judgment shall have, waived any and all provisions, rights,
7 and benefits conferred by any law of any state or territory of the United States, or
8 principle of common law, which is similar, comparable, or equivalent to Section 1542 of
9 the California Civil Code. Plaintiffs may hereafter discover facts in addition to or
10 different from those that they now know or believe to be true with respect to the subject
11 matter of the Released Claims, but Plaintiffs, upon the issuance of funds to Participating
12 Settlement Class Members pursuant to Section 2.5 of the Second Settlement, shall be
13 deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and
14 forever settled and released any and all Released Claims, known or unknown, suspected or
15 unsuspected, contingent or non-contingent, whether or not concealed or hidden, which
16 now exist, or heretofore have existed upon any theory of law or equity now existing or
17 coming into existence in the future, including, but not limited to, conduct relating to the
18 Released Claims that is negligent, intentional, with or without malice, or any breach of
19 any duty, law, or rule without regard to subsequent discovery or existence of such
20 different or additional fact.

21 **8.3** Nothing in this Release shall preclude any action to enforce the terms of this Second
22 Settlement Agreement.

23 **9. COVENANT NOT TO SUE**

24 **9.1** Plaintiffs, on behalf of themselves and the other Releasing Parties, covenant and agree that
25 they will not sue (at law, in equity, in any regulatory proceeding, or otherwise) Defendant
26 or any other Released Parties with respect to the Released Claims.

1 **10. NO ADMISSION OF LIABILITY OR WRONGDOING**

2 **10.1** The Parties agree and acknowledge that they are entering into this Second Settlement
3 Agreement solely to avoid the burden, expenses, and risk of continued litigation.
4 Defendant expressly disclaims and denies any wrongdoing or liability whatsoever. Neither
5 this Second Settlement Agreement nor the Second Settlement nor any drafts or
6 communications related thereto, nor any act performed or document executed pursuant to,
7 or in furtherance of, the Second Settlement Agreement or the Second Settlement: (a) is or
8 may be deemed to be or may be used as an admission of, or evidence of, the validity of any
9 Released Claim, or of any wrongdoing or liability of the Released Parties, or any of them;
10 or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any
11 fault or omission of the Released Parties, or any of them, in any civil, criminal, or
12 administrative proceeding in any court, administrative agency, or other tribunal. Nothing in
13 this paragraph shall prevent Defendant and/or any of the Released Parties from using this
14 Second Settlement Agreement and Second Settlement or the Order and Judgment in any
15 action that may be brought against them in order to support a defense or counterclaim based
16 on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment
17 bar or reduction, or any other theory of claim preclusion or issue preclusion or similar
18 defense or counterclaim.

19 **11. FAIR, REASONABLE, AND ADEQUATE SETTLEMENT**

20 **11.1** The Parties believe this Second Settlement Agreement is a fair, reasonable, and adequate
21 settlement of the Action and have arrived at this Second Settlement Agreement after arms-
22 length negotiations (including multiple day-long mediation sessions conducted by the Hon.
23 Layn Phillips (Ret.) on September 4, 2019; October 7, 2019; November 14, 2019; and
24 March 27, 2021) as well as numerous communications with Judge Phillips (Ret.)
25 throughout the period from August 2019 through January 2023, which led not only to the
26 Prior Settlement but to this Second Settlement, taking into account all relevant factors,
27 present and potential.
28

1 **12. AUTHORITY**

2 **12.1** In executing this Second Settlement Agreement, Plaintiffs, on behalf of themselves and the
3 Settlement Class, represent and warrant that, as far as they are aware, Settlement Class
4 Members are the only persons having any interest in any of the claims that are described or
5 referred to herein, or in any of the pleadings, records, and papers in the Action, and, except
6 as provided herein, Plaintiffs are unaware of said claims or any part thereof having been
7 assigned, granted or transferred in any way to any other person, firm, or entity.

8 **12.2** This Second Settlement Agreement is executed voluntarily and without duress or undue
9 influence on the part of or on behalf of the Parties, or of any other person, firm or entity.

10 **12.3** This Second Settlement Agreement shall bind and inure to the benefit of the respective
11 successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

12 **12.4** The Parties hereby acknowledge that they have been represented in negotiations for and in
13 the preparation of this Second Settlement Agreement by independent counsel of their own
14 choosing, that they have read this Second Settlement Agreement and have had it fully
15 explained to them by such counsel, and that they are fully aware of the contents of this
16 Second Settlement Agreement and of its legal effect.

17 **12.5** Each Party warrants and represents that there are no liens or claims of lien or assignments
18 in law or equity or otherwise of or against any of the claims or causes of action released
19 herein and, further, that each Party is fully entitled and duly authorized to give this
20 complete and final release and discharge.

21 **13. CONSTRUCTION AND INTERPRETATION**

22 **13.1** Neither the Parties nor their respective counsel shall be deemed the drafter of this Second
23 Settlement Agreement for purposes of interpreting any provision hereof in any judicial or
24 other proceeding that may arise between or among them.

25 **14. MODIFICATIONS AND AMENDMENTS**

26 **14.1** This Second Settlement Agreement supersedes all prior and contemporaneous negotiations
27 and agreements. No amendment, change or modification of this Second Settlement
28 Agreement or any part thereof shall be valid unless in writing and signed by the Parties.

1 **15. NO REPRESENTATIONS OF FACT**

2 **15.1** In entering into and executing this Second Settlement Agreement, the Parties warrant that
3 they are acting upon their respective independent judgments and upon the advice of their
4 respective counsel, and not in reliance upon any warranty or representation, express or
5 implied, of any nature or kind by any other person or entity, other than the warranties and
6 representations expressly made in this Second Settlement Agreement.

7 **16. GOVERNING LAW**

8 **16.1** This Second Settlement Agreement is entered into in accordance with the laws of the State
9 of California and shall be governed by and interpreted in accordance with the laws of the
10 State of California, without regard to its conflict of law principles.

11 **17. FURTHER ASSURANCES**

12 **17.1** Each of the Parties hereto shall execute and deliver any and all additional papers,
13 documents, and other assurances, and shall do any and all acts or thing reasonably
14 necessary in connection with the performance of its or their obligations hereunder to carry
15 out the express intent of the Parties hereto.

16 **18. TERMINATION**

17 **18.1** CalPERS shall have the option, but not the obligation, to terminate this Second Settlement
18 if more than 1% of the Settlement Class (by policy count) timely and validly requests to be
19 excluded from the Second Settlement. CalPERS shall exercise such option within ten (10)
20 days after CalPERS receives the Final Settlement List from the Settlement Administrator,
21 provided however that if CalPERS in its sole discretion determines that additional time is
22 required for CalPERS to make the decision as to whether to terminate, the Parties shall
23 work cooperatively, including as necessary to continue the Fairness Hearing, to provide
24 such time as CalPERS in its sole discretion determines is required to make the decision.
25 Notwithstanding the above, in no event shall CalPERS have more than sixty (60) days after
26 CalPERS receives the Final Settlement List from the Settlement Administrator to make
27 such decision.
28

1 **19. CONTINUING JURISDICTION**

2 **19.1** The Parties to this Second Settlement Agreement stipulate that the Order and Final
3 Judgment shall provide that the Court shall retain personal and subject matter jurisdiction
4 over the Action and the Parties and Participating Settlement Class Members after the entry
5 of the Order and Final Judgment.

6 **20. PRESS RELEASES**

7 **20.1** If the Parties initiate any public comments to the media or respond to any media inquiries,
8 they shall either (a) work cooperatively to announce the Second Settlement either via joint
9 press release or, if a Party wishes to announce the Second Settlement via a unilateral press
10 release, after obtaining consent from the other Party regarding the language of the press
11 release, which consent shall not be unreasonably withheld, and with any dispute over the
12 content of a disputed unilateral press release being resolved by the Hon. Layn Phillips
13 (Ret.), (b) work cooperatively to coordinate appropriate public comments about the Second
14 Settlement, and/or (c) refer to publicly filed documents in the Action. The Parties shall not
15 otherwise make any other statements to the media or issue any press releases, generally,
16 concerning the Second Settlement.

17 **21. TAX REPORTING AND NO PREVAILING PARTY**

18 **21.1** Any Participating Settlement Class Member or any other persons or entities receiving any
19 payment or consideration pursuant to this Second Settlement Agreement shall alone be
20 responsible for the reporting and payment of any federal, state, and/or local income or other
21 form of tax on any payment or consideration made pursuant to this Second Settlement
22 Agreement, and Defendant shall have no obligations to report or pay any federal, state,
23 and/or local income or other form of tax on any payment or consideration made pursuant to
24 this Second Settlement Agreement.

25 **21.2** All taxes resulting from the tax liabilities of the Settlement Account shall be paid solely out
26 of the Settlement Account.

27 **21.3** No Party shall be deemed the prevailing party for any purposes of this Action.
28

1 **22. COUNTERPARTS**

2 **22.1** This Second Settlement Agreement may be executed in counterparts, each of which shall
3 constitute an original, but all of which together shall constitute one and the same
4 instrument. The several signature pages may be collected and annexed to one or more
5 documents to form a complete counterpart. Photocopies of executed copies of this Second
6 Settlement Agreement may be treated as originals.

7 **23. NOTICES**

8 Unless otherwise specifically provided herein, all notices, demands, or other
9 communications given hereunder shall be in writing and shall be deemed to have been duly
10 given as of the date of electronic mailing. Postal mailing will be provided as well,
11 addressed as follows:

12 **To Class Counsel:**
13 Michael J. Bidart
mbidart@shemoff.com
14 SHERNOFF BIDART ECHEVERRIA LLP
600 South Indian Hill Boulevard
15 Claremont, California 91711

16 Gregory L. Bentley
gbentley@bentleymore.com
17 BENTLEY & MORE, LLP
4931 Birch Street
18 Newport Beach, California 92660

19 Gretchen M. Nelson
gnelson@nflawfirm.com
20 NELSON & FRAENKEL LLP
601 So. Figueroa Street, Suite 2050
21 Los Angeles, CA 90017

22 Stuart C. Talley
stuart@ktblegal.com
23 KERSHAW, TALLEY & BARLOW PC
401 Watt Avenue
24 Sacramento, CA 95864

1 **To CalPERS Counsel:**

2 Ragesh Tangri
3 rtangri@mofocom
4 Allyson R. Bennett
5 abennett@mofocom
6 MORRISON FOERSTER
7 425 Market Street
8 San Francisco, CA 94105

9 Matthew G. Jacobs, CalPERS
10 Matthew.Jacobs@calpers.ca.gov
11 Lincoln Plaza North
12 400 Q Street, Suite 3340
13 Sacramento, CA 95811

14 General Counsel, CalPERS
15 Lego_Court_Filing@calpers.ca.gov
16 Lincoln Plaza North
17 400 Q Street, Suite 3340
18 Sacramento, CA 95811

19 **24. OTHER PROVISIONS**

20 **24.1** The Parties: (a) acknowledge that it is their intent to consummate this Second Settlement
21 Agreement, (b) agree to cooperate in good faith to the extent reasonably necessary to effect
22 and implement all terms and conditions of the Second Settlement Agreement and to
23 exercise their best efforts to fulfill the foregoing terms and conditions of the Second
24 Settlement Agreement, and (c) agree to cooperate in good faith to obtain preliminary and
25 final approval of the Second Settlement and to finalize the Second Settlement.

26 **24.2** Plaintiffs: (a) agree to serve as representatives of the Settlement Class; (b) remain willing,
27 able, and ready to perform all of the duties and obligations of a representative of the
28 Settlement Class; (c) are familiar with the allegations in the Action, or have had such
allegations described or conveyed to them; (d) have consulted with Class Counsel about the
Action (including discovery conducted in the Action), this Second Settlement Agreement,
and the obligations of a representative of the Settlement Class; and (e) shall remain and
serve as representatives of the Settlement Class until the terms of this Second Settlement
Agreement are effectuated and fully implemented, this Second Settlement Agreement is

1 terminated in accordance with its terms, or the Court at any time determines that the
2 Plaintiffs cannot represent the Settlement Class.

3 **24.3** No person or entity shall have any claim against Plaintiffs, Class Counsel, the Settlement
4 Administrator, Defendant's counsel, or any of the Released Parties based on actions taken
5 substantially in accordance with the Second Settlement Agreement and the Second
6 Settlement contained therein or further orders of the Court.

7 **24.4** Plaintiffs and Class Counsel agree that if this Second Settlement Agreement or the Second
8 Settlement fails to be approved, fails to become effective, or otherwise fails to be
9 consummated, or if there is no Final Settlement Date, then: (a) the Parties will be returned
10 to the *status quo ante*, as if this Second Settlement Agreement had never been negotiated or
11 executed, except that, as provided in Section 5.2, Defendant shall be responsible for no
12 more than \$1,000,000 in Settlement Administration Expenses and Class Counsel shall be
13 responsible for the remaining Current Settlement Administration Expenses; and (b)
14 Defendant shall retain, and expressly reserves, any and all of the rights it had prior to the
15 execution of this Second Settlement Agreement to object to the maintenance of the Action
16 as a class action by Class Counsel and Plaintiffs. Plaintiffs and Class Counsel agree that
17 nothing in this Second Settlement Agreement or other papers or proceedings related to the
18 Second Settlement shall be used as evidence or argument concerning whether the Action
19 may properly be maintained as a class action, whether the purported class is ascertainable,
20 or whether Class Counsel or Plaintiffs can adequately represent class members under
21 applicable law. If the Agreement is deemed void or the Final Settlement Date does not
22 occur, Plaintiffs and Class Counsel agree not to argue or present any argument, and hereby
23 waive any argument, that Defendant could not contest (or is estopped from contesting)
24 maintenance of this Action as a class action based on any grounds Defendant had prior to
25 the execution of this Second Settlement Agreement; and this Second Settlement Agreement
26 shall not be deemed an admission by, or ground for estoppel against, Defendant that class
27 certification or any claims brought in the Action are proper or that such class certification
28 or claims cannot be contested on any grounds that Defendant had prior to the execution of

1 this Second Settlement Agreement. In the event the Second Settlement Agreement is
2 declared void or the Final Settlement Date does not occur, Plaintiffs and Class Counsel
3 retain and reserve any and all rights and arguments they had prior to execution of this
4 Agreement to oppose Defendant's positions and arguments. Each of the Parties will be
5 restored to the place they were in as of the date this Second Settlement Agreement was
6 signed with the right to assert in the Action any argument or defense that was available to
7 them at that time.

8 **24.5** The Parties agree, to the extent permitted by law, that all agreements made and orders
9 entered during the course of the Action relating to confidentiality of information shall
10 survive this Second Settlement Agreement.

11 **24.6** Other than necessary disclosures made to the Court or the Settlement Administrator, this
12 Second Settlement Agreement and all related information and communication shall be held
13 strictly confidential by Plaintiffs, Class Counsel and their agents until such time as the
14 Parties file this Second Settlement Agreement with the Court.

15 **24.7** The Parties and their counsel further agree that their discussions and the information
16 exchanged in the course of negotiating this Second Settlement Agreement are confidential
17 under the terms of the mediation agreement signed by the Parties in connection with the
18 mediation sessions with the Hon. Layn Phillips (Ret.) and any follow-up negotiations
19 between the Parties' counsel. Such exchanged information was made available on the
20 condition that neither the Parties nor their counsel may disclose it to third parties (other
21 than experts or consultants retained by the Parties in connection with the Action and subject
22 to confidentiality restrictions), that it not be the subject of public comment, and that it not
23 be publicly disclosed or used by the Parties or their counsel in any way in the Action should
24 it not settle, or in any other proceeding; provided however, that nothing contained herein
25 shall prohibit the Parties from seeking such information through formal discovery if not
26 previously requested through formal discovery or from referring to the existence of such
27 information in connection with the Settlement of the Action.

28 **24.8** The Parties reserve the right to agree between themselves on any reasonable extensions of

1 time that might be necessary to carry out any of the provisions of this Second Settlement
2 Agreement.

3
4 IN WITNESS THEREOF, each of the signatories has read and understood this Second Settlement
5 Agreement, has executed it, and represents that they are authorized to execute this Second Settlement
6 Agreement on behalf of the Party or Parties they represent, who or which has agreed to be bound by its
7 terms and has entered into this Second Settlement Agreement.

8 **CalPERS**

Plaintiffs

9
10
11 _____
12 Matthew G. Jacobs
13 General Counsel

14
15 _____
16 Holly Wedding
17 Plaintiff and Class Representative

18 _____
19 Date

20 _____
21 Date

22
23 _____
24 Richard M. Lodyga
25 Plaintiff and Class Representative

26 _____
27 Date

28
29 _____
30 Eileen Lodyga
31 Plaintiff and Class Representative

32 _____
33 Date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Approved as to form.

Dated: March 29, 2023

MORRISON & FOERSTER

By: _____
RAGESH TANGRI

Attorney for Defendant
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
SYSTEM

Dated: March 29, 2023

SHERNOFF BIDART ECHEVERRIA LLP

By: _____
MICHAEL J. BIDART
REID EHRLICH
Attorneys for Plaintiffs and the Class

Dated: March 29, 2023

BENTLEY & MORE, LLP

By: _____
GREGORY L. BENTLEY
MATTHEW W. CLARK

Attorneys for Plaintiffs and the Class

Dated: March 29, 2023

NELSON & FRAENKEL LLP

By: _____
GRETCHEN M. NELSON
STUART R. FRAENKEL

Attorneys for Plaintiffs and the Class

1 Dated: March 29, 2023

KERSHAW TALLEY BARLOW PC

2
3 By: _____
4 STUART C. TALLEY

5 Attorneys for Plaintiffs and the Class
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28